

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

DAN NGHIA (MARGARET) CHAU,

No. 13-80211 RS

Petitioner,

**ORDER DENYING PETITION TO  
VACATE ARBITRATION AWARD**

v.

MACY'S, INC.,

Respondent.

Petitioner Dan Nghia (Margaret) Chau seeks to vacate an arbitration award rejecting her claims for discrimination, harassment, wrongful termination and related alleged wrongdoing by her former employer, respondent Macy's, Inc. Pursuant to Civil Local Rule 7-1(b), the matter is suitable for disposition without oral argument, and the hearing set for December 12, 2013, is vacated. The petition will be denied.

Review of arbitration decisions is limited under the Federal Arbitration Act ("FAA"), and an award may be set aside only where (1) it is obtained through corruption, fraud, or undue means, (2) there is evidence of the arbitrators' bias or corruption, (3) the arbitrators are guilty of misconduct by refusing to postpone a hearing or to consider evidence, or (4) the arbitrators exceeded their powers or performed them so insufficiently that a final and definite award was not made. *Lagstein v. Certain Underwriters at Lloyd's, London*, 607 F.3d 634, 640 (9th Cir.2010).

1 Arbitrators exceed their authority when they express a “manifest disregard of [the] law” or  
2 the award is “completely irrational.” *Kyocera Corp. v. Prudential–Bache Trade Servs., Inc.*, 341  
3 F.3d 987, 997 (9th Cir.2003) (en banc) (internal quotation marks omitted). “Manifest disregard” is a  
4 deferential standard, overcome only where the arbitration panel commits clear and obvious error in  
5 the face of contrary law. *Sheet Metal Workers’ Int’l Ass’n Local 359 v. Madison Indus., Inc., of*  
6 *Ariz.*, 84 F.3d 1186, 1190 (9th Cir.1996) (stating that judicial review of an arbitration award,  
7 including for a manifest disregard of the law claim, is “both limited and highly deferential”);  
8 *Lagstein*, 607 F.3d at 641 (holding that to vacate an arbitration award on a manifest disregard of the  
9 law ground, it “must be clear from the record that the arbitrators recognized the applicable law and  
10 then ignored it” (internal quotation marks omitted)). Arbitrators need not provide reasons for their  
11 findings, but are presumed to have applied the law appropriately. *A.G. Edwards & Sons, Inc. v.*  
12 *McCullough*, 967 F.2d 1401, 1403 (9th Cir.1992) (*per curiam*).

13 Here, Chau contends the arbitrator acted in manifest disregard of the legal standards under  
14 which summary judgment can be granted, when he concluded that she had “failed to present  
15 sufficient evidence *to establish* any of [her] claims.” (Emphasis added). While the parties dispute  
16 whether or not California and federal summary judgment standards are effectively identical as to the  
17 moving party’s initial burden, there is no controversy that in neither forum must a plaintiff be able  
18 to “establish” his or her case at summary judgment, rather summary judgment has to be denied if  
19 there is a “triable issue” of fact.

20 Notwithstanding the arbitrator’s use of some language regarding a failure by Chau to  
21 “establish” her claims, the petition to set aside the award must be denied for two reasons. First,  
22 Chau has failed to show that the arbitrator was required to follow the legal standards that would  
23 apply to a summary judgment motion in either state or federal court in any event. The arbitration  
24 agreement required the arbitrator to apply the *substantive* law of the state where Chau was  
25 employed, namely California. See Early Dispute Resolution Rules and Procedures, Step 4, Article  
26 12. As is ordinarily the case, however, the arbitration agreement plainly contemplated a  
27 streamlined proceeding, under procedural rules differing from those applicable in either state or  
28 federal court. The agreement expressly authorized each side to bring one “dispositive motion,”

1 without further specifying any standards to be applied in deciding such motions. See Step 4, Article  
2 11 (d). Much as the arbitrator was expressly permitted to admit evidence without strict application  
3 of the Federal Rules of Evidence (Step 4, Article 11 b), he was implicitly authorized to decide a  
4 “dispositive motion” without being bound by the precise contours of either Rule 56 of the Federal  
5 Rules of Civil Procedure or California Code of Civil Procedure §437c.<sup>1</sup> Chau has failed to show  
6 any “manifest disregard” of the law, because she has not supported her underlying premise that state  
7 and/or federal standards for summary judgment applied in the context of this arbitration.

8 The petition to vacate also fails because even assuming the arbitrator was not authorized to  
9 grant summary judgment except on a record that would support such a result under Rule 56 and/or  
10 §437c, the decision read as a whole is consistent with those standards. The arbitrator repeatedly  
11 stated that for the purposes of deciding the motion, he was taking all of Chau’s factual allegations  
12 and evidence as true. Although he expressed the ultimate conclusion that the evidence would be  
13 insufficient to “establish” the requisite elements of the legal claims advanced, it is clear from  
14 context that the evidence was, in the arbitrator’s view, insufficient to raise a triable issue of fact.  
15 The arbitrator did not look at conflicting evidence and conclude Chau would be unable to prove her  
16 case. Rather, he *assumed* all the facts advanced by Chau could and would be proven, but concluded  
17 those facts were legally insufficient to give rise to liability. Chau has complained about the  
18 arbitrator’s phrasing, but she has pointed to nothing that suggests the arbitrator’s analysis ignored  
19 any triable issue of fact because of an incorrect focus on her ultimate ability to prevail.

20 While it might have been preferable had the decision used the language “no triable issue of  
21 fact,” that is, in essence, what the arbitrator found. Thus, even to the extent state or federal  
22 procedural rules applied to the dispositive motion, Chau has shown no grounds to vacate the award.  
23 The petition is denied.

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27 <sup>1</sup> There might be circumstances under which a party had been so deprived of the opportunity to be  
28 heard that the lack of explicit standards for “dispositive motions” in the arbitration agreement would  
not serve to justify the award. No such situation is presented here.

1 IT IS SO ORDERED

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3 Dated: 12/9/13

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RICHARD SEEBORG  
UNITED STATES DISTRICT JUDGE